SINGLE BENCH

(7)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No. 782 of 2006

PETITIONERS:

1. Satish Kumar Shrivastava, S/o Rana Shyam Kumar Shrivastava, Aged about 47 years, Occupation: Service, Working as Assistant Gram Panchayat Officer, Presently posted at Gram Panchayat: Kanthi, Tehsil: Ambikapur, District: Surguja, Chhattisgarh.

2. Parmeshwar Prasad Gupta, S/o Late Ramvriksha Sao, Aged about 47 years, Occupation: Service, Working as Assistant Gram Panchayat Officer, Presently posted at Gram Panchayat: Pokra, Block: Rajpur, District: Surguja, Chhattisgarh.

3. Ravindranath Singh, S/o Late Doodhnath Singh, Aged about 46 years, Occupation: Service, Working as Assistant Gram Panchayat Officer, Gram Panchayat: Jarhi, Block & Tehsil: Pratappur, District: Surguja, Chhattisgarh.

4. Upendra Tiwari, S/o Baleshwar Tiwari, Aged about 43 years, Occupation: Service, Working as Assistant Gram Panchayat Officer, Nagar Panchayat: Surajpur, Tehsil: Surajpur, District: Surguja, Chhattisgarh.

R.N. No. 1053/06
Presented by Sk Gupta
dated 22/12/06

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- Versus -

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RESPONDENTS:

1. State of Chhattisgarh,
Through the Secretary,
Women, Child Development &
Social Welfare Department,
Mantralaya, D.K.S. Bhawan,
Raipur, Chhattisgarh.

2. The Secretary,
School Education Department,
State of Chhattisgarh,
Raipur, Chhattisgarh.

3. Director, Public Instructions,
Raipur, Chhattisgarh.

4. Director, Panchayat & Social
Welfare Directorate, Raipur,
Chhattisgarh.

5. Commissioner, Panchayat and
Social Welfare,
State of Chhattisgarh, Raipur,
Chhattisgarh.

6. Naveen Dutt Bhatt,
S/o Late Amba Dutt Bhatt,
Aged about 45 years,
R/o Village: Mungeli,
District: Bilaspur, Chhattisgarh.

7. Harendra Singh Birdhi,
S/o Ratan Singh Birdhi,
Aged about 50 years,
R/o Village: Sarangarh,
District: Raigarh, Chhattisgarh.

8. Anil Kumar Verma,
S/o Late Krishna Chandra
Verma, Aged about 47 years,
R/o Kedarpur, Joda Pipal,
Ambikapur, District: Surguja,
Chhattisgarh.

9. Ramesh Kumar Sinha,
S/o Late Mangal Kishore Sinha
Aged about 42 years,
R/o Kedarpur, Joda Pipal,
Ambikapur, District: Surguja,
Chhattisgarh.

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10. Kunwarelal Kewra,
S/o Budh Sen Kewra,
Aged about 50 years,
R/o Ambikapur,
District: Surguja, Chhattisgarh.

11. Jitendra Kumar Shrivastava,
S/o Ramanuj Prasad Shrivastava, Aged about 43 years, R/o Ambikapur,
District: Surguja, Chhattisgarh.

12. Sushil Kumar Bada,
S/o Prabhu Dayal Bada,
Aged about 45 years,
R/o Rajpur, District: Surguja,
Chhattisgarh.

13. Hira Sai Netam,
S/o Lohar Sai Netam,
Aged about 54 years,
R/o Ambikapur,
District: Surguja, Chhattisgarh.

14. D.P. Agrawal,
S/o Prahlad Rai Agrawal,
Aged about 50 years,
At present posted as Education Organizer in the Panchayat and Social Welfare Department, Bilha,
R/o Bilha, District: Bilaspur,
Chhattisgarh.

15. Prakash Kumar Verma,
S/o B.S. Verma,
Aged about 47 years,
At present posted as Education Organizer in the Panchayat & Social Welfare Department, Jagdalpur,
District: Bastar, Chhattisgarh.

16. Basant Singh Baghel,
S/o Jai Narayan Singh Baghel,
Aged about 44 years,
At present posted as Education Organizer in the Panchayat & Social Welfare Department, Jagdalpur,
District: Bastar, Chhattisgarh.

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Respondents No.6 to 16 above, all working as Education Organizers in the Department of Panchayat and Social Welfare of the Government of Chhattisgarh.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT/WRITS, DIRECTIONS ETC., IN THE NATURE OF MANDAMUS, CERTIORARI AND/OR ANY OTHER SUITABLE WRIT OF LIKE NATURE

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HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 982 OF 2006

Satish Kumar Shrivastava and others

Versus

State of Chhattisgarh and others

Order post for 23-2-2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH : BILASPUR

WRIT PETITION NO. 982 OF 2006

Satish Kumar Shrivastava and others

Versus

State of Chhattisgarh and others

Present :- Shri Rajeev Shrivastava, counsel for the petitioners.

Shri U.N.S. Deo, Govt. Advocate for State/ respondents No. 1 to 5.

Shri Jitendra Pali, counsel for the respondents No. 6 to 16.

O R D E R

Per Shri Dhirendra, Mishra, J

With the consent of the parties the matter is heard finally.

2. The instant petition is directed against the order dated 9-1-2006 of Annexure P-8 whereby the respondents No. 6 to 16 who were working as Clause -3 (Executive) in Adult Education Directorate have been posted on the same pay scale Rs. 4000-100-6000 as Panchayat and Social Education Organizer in the Panchayat and Social Services Department.

3. Relevant facts necessary for adjudication of this petition are that the petitioners were appointed on the post of Class-3, Ministerial Service in the department of Panchayat and Social Welfare between 1981 and 1987. Since 2002, they have been designated as Assistant Gram Panchayat Officer. Petitioners' next promotion would on the post of Sub-Auditor and thereafter they would be promoted to the post of Panchayat Inspector which is equivalent to Panchayat and Social Organizer; whereas the respondents No. 6 to 16 were appointed by Directorate, Panchayat and Social Services to the post of Class- 3 (Executive) in Panchayat and Social Education Organizer/ Supervisor in M.P.

Panchayat and Social welfare department vide order dated 18-1-1980. They were selected by mini Public Service Commission and posted under Adult Education Programme. The School Education Department of erstwhile State of Madhya Pradesh vide order dated 29-5-1997 declared all the Organizers (Class-3) Executive working under Adult Education Directorate as surplus and vide order dated 6-6-1998 their services were permitted to be absorbed in the School Education Department on the post of Upper Division Teacher. Pursuant to the above order, vide order dated 9-9-2003, services of the Adult Education Supervisors working in the State including services of respondents No. 6 to 16 have been merged in the School Education Department. The Commissioner, Panchayat and Social Services vide letter dated 10-11-2000 of Annexure P-4 addressed to Dy. Director, Panchayat and Social Welfare, District Sarguja apprised him that Adult Education Supervisors cannot be posted as Panchayat and Social Education Organizers since the Government has declared School Education Department as parent department of Adult Education Organizers. This letter was in reference to a representation submitted by Supervisors Union, Ambikapur, District Sarguja.

4. The respondents No. 6 to 16 filed Writ Petition No. 3929/2003 and Writ Petition No. 2205/2004 before this Court challenging the order dated 9-9-2003 whereby School Education Department had directed absorption of Supervisors working in the Department of Panchayat and Social Welfare as Upper Division Teacher in the School Education department. Both these writ petitions were disposed of by this Court with a direction to the petitioners of those petitions to make detailed representation raising their grievance before the competent authority who shall decide the same in accordance with law as early as possible preferably within a period of 6 weeks from the date of receipt of the representation. Thereafter, the Women and Child Development and Social Welfare Department decided the representation vide order dated 9-1-2006 (Annexure P-8) against which this petition has been preferred.

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5. Learned counsel for the petitioners submits that the entire Adult Education Department stood merged in the School Education Department and in these circumstances, parent department of respondents No. 6 to 16 cannot be changed from the School Education Department to Panchayat and Social Services Department. Services of the respondents No. 6 to 16 could not be absorbed in Panchayat and Social Services Department and above respondents cannot be posted as Panchayat and Social Education Organizers as there is no rule/circular in this regard as is evident from memo of Annexure P-4. The order of Annexure P-8 is *de hors* of rules and, therefore, the same is illegal and deserves to be quashed. It was vehemently contended that from perusal of the order of Annexure P-8, it is evident that the same has been passed purportedly in compliance of the order passed in W.P. No. 3929/2003 and W.P. No. 2205/2004 (Annexures P-6 and P-7 respectively), though there is no such direction by the High Court.

6. On the other hand learned counsel for the respondents No. 2 and 3 submitted that in compliance of the High Court's orders passed in W.P. No. 3929/2003 and W. P. No. 2205/2004, the representations of respondents No. 6 to 16 were considered and thereafter they have been posted on the post of Education Organizers in the Panchayat and Social Welfare department on the same pay scale with prior consent of the Panchayat and Social Welfare department and the School Education department. It is argued that the decision integration of services of respondents No. 6 to 16 in the Panchayat and Social Welfare department has been taken after considering the representations. The petitioners have no *locus standi* to challenge the above well considered decision of the State.

7. Learned counsel for respondents No. 6 to 16 contended that the parent department of respondents No. 6 to 16 was Panchayat and Social Service Department as is evident from the order of appointment dated 18-1-1980. They were appointed in the

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Executive Cadre after being selected by mini Public Service Commission. Earlier Adult Education Programme was commenced by the State Government which was subsequently closed and the State Government erroneously declared these respondents as surplus without following the process prescribed under the law and without gazette notification. Under these circumstances, the writ petitions were filed and in pursuance of the orders passed in writ petitions, the respondents No. 6 to 16 submitted their representations to the concerned department and after considering the grievance raised in the representations, the State Government has taken the decision of Annexure P-8. The petitioners are Assistant Gram Panchayat Officer, their next promotion is to the post of Sub Auditor and only thereafter they shall be eligible for promotion to the post of Panchayat and Social Welfare Organizer. The petitioners have no locus standi to challenge the order of Annexure P-8.

8. I have heard learned counsel for the parties.

9. From perusal of order dated 18-1-1980, it is clear that respondents No. 6 to 16 were appointed in the department of Panchayat and Social Service of erstwhile State of Madhya Pradesh as Class-3 (Executive) and were posted as Panchayat and Social Service Organizers/supervisors, whose services were subsequently declared surplus vide order dated 19-5-1997 and the same were permitted to be absorbed in the School Education Department as Upper Division Teacher vide order dated 6-6-1998. Their services were absorbed in the School Education Department and against this order, two writ petitions were filed by the respondents No. 6 to 16. However, order dated 9-1-2003 was not given effect to and they were not relieved from their department on the basis of the interim order passed in W.P. No. 3929/2003 and they were allowed to continue till their representation was decided. Thus from the above facts, it is clear that the absorptions of the respondents No. 6 to 16 in the School Education Department has not been effected and in the meanwhile, the

representation of respondents No. 6 to 16 has been allowed and they have now been posted in the department of Panchayat and Social Service vide order vide Annexure P-8 dated 9-1-2006.

10. The petitioners are challenging the above order on the ground that by posting respondents No. 6 to 16 in the department of the petitioners, chances of promotion of the petitioners shall be affected because the petitioners are also to be promoted firstly to the post of Sub Auditor and thereafter to the post of Panchayat and Social Welfare Organizers.

11. It is settled law that a right to be considered for promotion is a term of service, chances of promotion are not. Hence the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. In the present case what was affected by the change of policy were merely the chances of promotion of the petitioners and their right or eligibility to be considered for promotion remained unaffected, therefore, the policy decision of the Government to post respondents No. 6 to 16 in Panchayat and Social Welfare department is not open to judicial review. Reliance is placed in the matters of ***K. Jagadeesan –v- Union of India and others*** (1990)2 SCC 228, ***Union of India and others –v- S.L. Dutta and another*** (1991) 1 SCC 505 and ***Union of India and others –v- N.Y. Apte and others*** (1998) 6 SCC 741. It is also settled law that when personnel drawn from different sources are being absorbed and integrated in a new department, it is primarily for the Government or the executive authority concerned to decide as a matter of policy how the equation of posts should be effected and the Court will not interfere with such a decision unless it is shown to be arbitrary, unreasonable or unfair, and if no manifest unfairness or unreasonableness is made out, the Court will not sit in appeal and examine the propriety or wisdom of the principle of equation of posts adopted by the Government. Reliance is placed in the matter of ***R.S. Makashi and others –v- I.M. Menon and others*** (1982) 1 SCC 379 and ***Tamil Nadu Education***

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Department Ministerial and General Subordinate Services Association and others -v- State of Tamil Nadu and others (1980) 3 SCC 97.

12. In the instant case, as has been already observed in the forgoing paragraphs that respondents No. 6 to 16 were initially appointed in the department of Panchayat and Social Welfare Service of the erstwhile State of M.P., they were posted as Panchayat and Social Education Organizers/Supervisors. They discharged their duties for more than 25 years in this post since 1980. They do not have any teaching experience and, therefore there absorptions in the School Education Department as U.D.T. would not have served the purpose. In these circumstances, the order of Annexure P-8 by which the petitioners have been posted in Panchayat and Social Service Department cannot be faulted. The petitioners do not have any *locus standi* to file this petition only on the ground that their chances of promotion are hampered as the chances of promotion are neither a right nor they are conditions of services.

13. In the result, the petition being devoid of substances, deserves to be dismissed and is accordingly dismissed.

14. Consequently, M.W.P. No. 764/2006 and I.A. No. 7760/2006 also stand disposed of.

Sd/-
Dhirendra Mishra
Judge